

Congressional Investigations:

INNER WORKINGS

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CONGRESSIONAL investigations have a necessary and important place in the American scheme of government. First, such investigations should probably be used much more than they are as a means of determining exactly what type of legislation is needed to meet certain problems. Second, it is possible through congressional investigations to expose activities dangerous to the nation's welfare which, not being illegal, cannot be fully dealt with by the law enforcement agencies. Indeed this second function of congressional investigations may be the most effective single method available to a democracy in guarding against movements which operate generally within the law but which seek ultimately to destroy the very freedom which makes possible their existence. The second type of investigation is also a means of exposing corruption, harmful economic practices, and other such evils.

British and Canadian "Royal Commissions" are examples of successful use of committee investigation as a basis for legislative action.* Our Joint Committee on the Economic Report was conceived originally as serving this same purpose in the field of over-all economic stabilization. And a number of subcommittees have from time to time been set up by regular standing committees of House and Senate to investigate fully the need for certain types of legislation and the form it should take. Other examples could be given. By and large, however, our Congress is too little inclined to employ this approach to the development of sound legislation and too much inclined to rely upon executive departments to draft proposed legislation.

As to the second function, that of exposure of undersirable or dangerous practices and activities, the purpose is of a different sort and while legislative action may result, a primary objective is to convey to the people generally facts and information which they cannot otherwise obtain.

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* Consult Finer, *The British System*, page 521 *infra*; Rogers, *The Problem and its Solution*, page 464 *infra*.

It cannot be stressed too strongly that the effectiveness of this second type of investigation depends directly upon the sharpness of its focus. To be specific, if the purpose of the investigation is to expose communist (or fascist) activity in the United States, that purpose will be achieved to the extent that the investigation is really directed against Communists (or Fascists); whereas the impact upon such groups will be weakened to the extent that the investigation is used as a means of attack upon persons, however dissident their views, who are not in fact members of the suspected organizations.

Having briefly noted the functions of congressional investigations, let us see how they get started and how they are, in general, conducted.

The origin of the House Committee on Un-American Activities will illustrate a first point, which is that congressional investigations are frequently started because some member of the House or Senate believes he has hit upon a field of inquiry which can catch the public's attention. Two members of the House decided at almost the same time—in the year 1937—that such a field was to be found in “un-American activities.” Both introduced resolutions for the setting up of special committees. One such resolution was not passed because many members of the House did not like its author personally and their votes, added to those of members who thought at the time that such an investigation was unnecessary, were enough to defeat the resolution. The other resolution was passed, however, and the Committee began its well-publicized career.

It is not a good reason, but it is a fact, that many congressional investigations are launched because some member who is not unpopular with his colleagues simply wants to be chairman of an investigation committee. Since the House Rules Committee has jurisdiction over most resolutions calling for special investigations, members of that Committee are in a strategic position to introduce and obtain consideration for such resolutions. And since the member introducing a resolution of this sort almost invariably is appointed chairman of the resulting committee, Rules Committee members have an inside track in achieving that distinction. There have been times when an actual majority of members of the Rules Committee have been presiding over special investigating committees.

Most members of Congress dislike to offend other members. Therefore if a fairly influential member is persistent in his efforts to secure establishment of a special investigating committee, the time frequently comes when a majority of his colleagues vote for it with the remark: “So-and-so is a good fellow. Let's let him have his investigation.”

It does not necessarily follow that an investigation so launched will be

either a waste of time or a harmful influence. For example, it will be generally agreed that the Committee on Un-American Activities has done more of good by opening people's eyes to the methods of Communists and Fascists, than it has done of harm by failing to focus always upon its announced and delegated purpose. But there ought to be an initial reason sounder than personal ambition for Congress to decide to spend the taxpayers' money on an investigation.

Some investigations are started for purely political reasons—because members of one party believe they can put the opposite party in a bad light. Occasionally important facts have been brought forth by investigations with this motivation. But they hardly start under the right auspices and sometimes they do great damage. Regardless of one's opinion of the results, few will doubt that the motivation behind the investigation of the State Department precipitated by one senator's blanket charges was basically a political motivation.

Occasionally congressional investigations are authorized because Congress as a body, or at least a majority of its members, become angry at some executive agency, or at some organization, and decide to "take it apart." The cherished hope in such instances is that the result of the investigation will be to show the agency or organization in question in an unfavorable light. One example of this sort of "fishing expedition" is to be found in the investigation of the Federal Communications Commission of several years ago. In that case, moreover, the chairman of the Committee had an avowed personal reason for wishing to discredit the FCC. Another such example was the investigation of the Townsend old age pension organization during the period of its heyday.

Needless to say, none of the reasons so far discussed for the launching of congressional investigations is a good and sufficient one. True, investigations having their origin in personal ambition, partisan politics, or congressional pique have sometimes turned out to be fruitful of important information and desirable impact. Obviously, however, there is a far better chance of this happening if the investigation is begun with the right motivation.

Congressional investigations ought to be authorized for just one reason—the need of the nation to have an investigation carried on in a certain field. There are plenty of examples of investigations which have had exactly this purpose. Some of these are: the Joint Committee on the Economic Report, the post-war planning committees that followed World War II, the subcommittee of the Senate Committee on Agriculture now investigating price spread, the Joint Committee on Internal Revenue

Taxation, and the committees on the development of administrative law. Others have been suggested, such as a committee to investigate the use of monetary measures to maintain economic stability.

It would perhaps help to put congressional investigations on this basis if investigations were conducted by regular, standing committees rather than by special committees. Indeed the practice seems to be developing of appointing subcommittees of standing committees to go thoroughly into certain special phases of the legislative work. Carried far enough this practice could significantly displace the use of special investigating committees. Under such circumstances a member of Congress who believed an investigation should be conducted would know that if his resolution passed it would not automatically place him in the position of chairman of the committee. Rather would it lead to the job being assigned to the standing committee in whose general field of legislative activity the investigation logically lay. Obviously another way of solving this same problem would be simple abandonment of the almost invariable present practice of appointing the author of a successful resolution as chairman of the resulting committee. But congressional customs are not, to say the least, readily changed.

Once an investigation has been authorized by Congress and a committee appointed to conduct it, a number of critical decisions are made in one way or another. First a staff must be engaged. For this purpose a number of meetings of the committee should be held where applicants are carefully screened by all members of the committee until the very best available talent is secured. Frequently this is done. But all too often the chairman simply presents to the other members of the committee staff personnel of his choice, and asks their approval. In such cases the proposed staff members are altogether likely to be "deserving" persons from the chairman's home district. Sometimes they are even blood relatives. Hence committee members have their choice between offending the chairman at the very outset of the investigation or acquiescing in his choice—and generally they acquiesce.

The second critical decision has to do with the general plan of the investigation. The field, which appeared so clear and definite when the resolution was being debated on the floor, now reveals the greatest complexity and extends almost beyond limits. Where to start, what major divisions of the field to establish, what witnesses to call, how to divide the work in some logical manner—all these must, or rather should be decided with great care. Investigating committees should, and frequently do, meet at

the outset of their work to develop such an over-all plan. The effectiveness of the investigation depends in large measure upon their doing so.

But they do not always do so. One of the outstanding facts about congressional investigations is that the chairman of the committee usually dominates the proceedings almost completely. The investigation will almost certainly bear his name and he will receive most of the publicity connected with its work. This is not in itself, perhaps, a bad thing.

But it can be. For example, some chairmen, instead of calling the committee to develop a general plan for the investigation, simply choose without consultation the particular subject for the opening hearings and announce that the committee will meet at such and such a time and place. And this arbitrary type of procedure will continue unless other committee members strenuously object.

Under such circumstances the whole investigation is in danger. For there is always intense pressure, from the press if nowhere else, upon every such committee chairman to show "results" at the earliest possible moment. Moreover, if the chairman acts alone in deciding the course of the investigation, suggestions by almost anyone, either within or outside the Congress, may determine the entire direction of the investigation. There is always an abundance of such suggestions.

Subject matter which may be of political consequence to some member of Congress may receive attention out of all proportion to its significance. What is more serious, special interests may use a congressional committee in an attempt to discredit their rivals or opponents. Newspapers, business concerns, political organizations, propaganda agencies, even research agencies, have made such attempts. It is clear that such abuses are most likely where only the chairman need be approached, and far less likely if a whole committee must be persuaded of the validity of a particular specific object of investigation.

Once underway, the investigation will be fruitful of good results or the opposite depending upon a number of factors. Are executive meetings regularly held to evaluate the work so far done and to begin discussion of material to go into the report? Do members keep running notes during the hearings to which they can later refer? Above all, do members, other than the chairman, regularly attend? In the case of all too many committees, hearing after hearing will be held with only the chairman and staff in attendance. Other committee members, admittedly busy with other duties, just do not come. It is no easy task, even with the best of effort on the part of a conscientious chairman, to induce full committee action and attention in a special investigating committee.

Unless, however, committee members do take their assignments seriously, other results are likely to flow from the one-man character of the investigation. Committee reports ought to be a joint product of the best thinking not only of the staff, nor of the staff and chairman, but of the entire committee. And in many cases this is true. Even arbitrary chairmen will usually desire to have reports signed by as many committee members as possible and this gives an opportunity for a member who has worked at his job to insist upon constructive changes before he signs. But too frequently reports are prepared either by the staff alone or under the chairman's sole direction and submitted to other members at the last minute before filing. They must then either agree or disagree to the report as written, or else be put in the position of an "obstructionist." All of this can be avoided simply if all committee members devote continued attention to the work.

One thing is certain. A conscientious member of a congressional investigating committee has no easy task—especially if his view and that of the chairman are at variance. Each member must do a great deal of plain hard studying if he is to keep up with the subject matter of the investigation. Each member will be under pressure from people all over the nation, most of whom will have preconceived ideas of one kind or another as to what the investigation should produce. Hardly any of these people can possibly be as well-informed regarding the subject of investigation as the committee member. He must be able to answer them honestly and effectively. At the same time the committee member is under constant pressure from within the committee to "go along" peacefully and not "make trouble" or additional work. He must develop a fund of knowledge with which to defend whatever position he may take.

The effectiveness of congressional investigations—as distinguished from the amount of publicity they receive—is dependent upon five principal factors. These are: the character and capabilities of the committee chairman; the care with which committee reports are prepared and the extent to which emphasis is placed on the official reports rather than interim statements by individual committee members; the calibre of the committee staff; the degree to which fair and judicious rules of procedure are adopted and observed; and the absence of partisan or political bias.

These points can be illustrated from some personal experience on the part of the author, who happened to serve on three special investigating committees during his period of service in the House of Representatives.

One of these was the Committee on Un-American Activities.* Two

* Consult Carr, *Un-American Activities Committee*, page 598 *infra*.

facts respecting that Committee should be set down at the outset. The first is that without question this Committee has made a signal and probably indispensable contribution toward awakening the American people to the aims and tactics of totalitarian organizations in the United States, and to the menace they constitute to our free institutions. The second fact is that the impact of the Committee work could have been far greater than it has been had the five factors just set forth been at all times carefully observed. There was a period in the work of the Committee on Un-American Activities when it did observe them with considerable care. The distinction was sharply made between totalitarian agents on the one hand and perfectly loyal Americans holding dissident economic or political views on the other. During that period the Committee operated fairly well *as a committee* rather than as a loose collection of frequently clashing individuals. And during that period a series of reports were issued which still stand as basic, factual, and exceedingly important information about communist and fascist activities in the United States. These reports of the Committee were signed by all members and represented their joint findings of fact rather than their diverse political views.

This Committee has, however, never had a strong staff. Indeed at times it has had a very weak one. Hence its work has lacked continuity and, at times, orderliness of procedure as well. There have been periods when individual Committee members, seeing obviously excellent opportunities for personal publicity, have made it almost a practice of giving to the press advance opinion on "probable committee findings" which have greatly weakened the impact of the work.

Worse still, on occasions the Committee has lent itself to attempts to identify progressive political opinion in some way with communism. This basic mistake is of benefit to no one except the Communists themselves, since it renders more difficult the effective isolation of Communists from the rest of the population. Further, it gives them opportunity to make anew the utterly false claim, so dangerous to our free institutions, that there is no basic difference between Communists on the one hand and loyal American liberals or progressives on the other. It is quite true that the political tactic of accusing one's opponent of some sort of affinity with "communism" has proved "successful" in recent months. But such success has unquestionably been bought for individual candidates at a high price to be paid by the nation as a whole. So long as Communists can cover their activities by pointing to all manner of American political leaders (including some very conservative ones) and saying that they too

have been accused, there is that much less chance to isolate the Communists and their activities in the public mind. And it is precisely such isolation which the Communists most fear and which should at all times be the objective of a committee on un-American activities.

One of the other investigations on which the author served was that which inquired into the operations of executive agencies during the war period. In this case the Committee staff was no stronger than that of the Un-American Activities Committee, but the Committee chairman was most careful in his conduct of the investigation. He insisted that the Committee as a whole meet and agree upon a general plan for the investigation. He insisted also upon full Committee action whenever any sort of report or statement was to be issued. Whenever there was a minority report the chairman saw to it that such minority report reached the press at the same time as the majority report. Procedures were of the most careful sort. Individual Committee members, including the chairman, refrained from giving out statements pre-judging any case or forecasting findings. Reports of this Committee had marked effect upon legislative policies followed by the Congress. Among other results, the Appropriations Committee was given the function of investigating the expenditures of executive agencies thus giving Congress an independent means of checking on the validity of appropriation requests of such agencies.

The third special investigation participated in was the one on post-war planning. In this case a strong staff was engaged which succeeded in guiding if not in dominating the course of the work done. Again a careful plan for dealing one by one with the most important problems was developed and agreed upon. Most of the Committee recommendations were framed in such manner as to be readily adapted to legislative enactment and many of them were actually adopted by the Congress. The very urgency of the problem dealt with caused Committee sessions to be well attended and much hard work to be done by most Committee members. No attempt was made either by the chairman or any other members to dominate the proceedings or "steal the spotlight."

Of course it is evident that economic problems pure and simple lend themselves less readily to exciting headlines than does the material dealt with by a committee like that on un-American activities. Indeed one purpose of the investigation of subversive or undesirable activities is entirely aside from the law-making process as such. It is, simply, to inform the people. This is but an additional reason, if any is needed, for the observance of such rules as will give strength to committee findings when they are made.

Properly used, the investigating function of the Congress is not only useful but essential to the effective functioning of our democratic form of government. It is admittedly subject to abuse—particularly in periods of tension. To the extent that investigations are conducted with a view to the headlines of the moment such abuse is the more likely. To the extent that full committee action is insisted upon, proper rules of procedure adopted, and the central objectives of the investigation—particularly its legislative objectives—carefully kept at the forefront of its work, abuses can be guarded against and beneficial results obtained.